

NOTE: FINAL LEASE AGREEMENT AND CONTRACT DOCUMENT WILL BE TAYLORED TO REFLECT TERMS AND CONDITIONS OF SUCCESSFUL OFFEROR'S PROPOSAL.

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this _____ day of _____, 2016, by and between the COMMONWEALTH OF KENTUCKY, Department of Parks, by and through William M. Landrum, III, Secretary, Finance and Administration Cabinet, pursuant to KRS Chapters 45A and 56, Capital Avenue, Frankfort, Kentucky 40601, hereinafter referred to as Lessor, and _____, whose address is _____, hereinafter referred to as the "Lessee".

WITNESSETH:

WHEREAS, the Lessor operates an installation, known as the Frankfort Office Building, located on Sower Boulevard, in Frankfort, Franklin County, Kentucky; and,

WHEREAS, the Lessor issued a Request for Proposals (RFP) for the solicitation of food services for the Frankfort Office building; and,

WHEREAS, the Lessee proposal was awarded the lease agreement, as the highest evaluated proposal received in response to the solicitation; and this Lease Agreement consummates the responsibilities of each party.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the Lessor and the Lessee hereby agree as follows:

Section 1. Purpose of Lease

A. The Lessor hereby Leases to the Lessee the food services area and ingress/egress thereto, containing approximately 4,102 square feet for the food services area for the Lessee's use and a 217 square foot area to be utilized by the Lessee as a shared storage area with the Office for the Blind, located on the first floor of the Frankfort Office Building, Sower Boulevard, Frankfort, Franklin County, Kentucky, as described in the attached Exhibit A.

B. Lessee shall utilize the Leased premises as food services and for no other reason. The Lessee shall provide first class quality food and beverages, and such other services as are of the highest quality commensurate with industry standards and within reasonable prices. The

Lessee shall comply with such price, quantity and quality standards as the Lessor may from time to time require, and shall promptly change, correct or modify the price or quality of any item after written notice to do so; provided, however, the Lessor shall exercise all authority and rights of approval under this Section in a reasonable manner. The selection, prices, portion sizes and quality of all items so established shall not be changed without the written consent of the Lessor.

C. Design, construction, and cost of the fit-up of the food services area are the sole responsibility of the Lessee, with the exception of the dining area indoor tables/chairs, the grease trap, the vent hood connection, the three-compartment sink, and the non-fixtured kitchen equipment covered by the FAC subsidy, see Paragraph ____ herein.

D. The leased premises includes the perimeter metal stud partitions around the leased premises, security grilles and doors at server entrances, access to basic heating, cooling, ventilation, plumbing, fire protection, electric, and communications services, but not specific domestic water, gas, electric, and sanitary sewer service beyond rough-in and metering, which shall be installed and separately metered by and at the sole expense of the Lessee.

E. The Lessee shall, at its sole expense and cost, provide design and construction document services for the leased premises within thirty (30) days of the date of selection of the successful Offeror (n/l/t _____). The Lessee's kitchen designer shall coordinate the food services design with the Finance and Administration Cabinet's Division of Engineering and Contract Administration (DECA). DECA shall have review and consent authority over the food services design for the leased premises. The Lessee shall be able and prepared to interact with the FOB design team throughout the preparation and execution of the FOB Contract Documents. The Lessee shall provide such consulting services in a timely manner so as not to delay the Frankfort Office Building project schedule appended hereto, and fully incorporated herein as Exhibit D.

F. The Lessee's expected fit-up of the leased premises shall include all gypsum drywall on the perimeter stud walls of the 'white space', interior partitions, finishes, equipment, mechanical, electrical, plumbing, fire protection systems and other necessary improvements not a part of the food services 'shell' or 'white space' construction, provided under the FOB construction documents.

G. It shall be the responsibility of the Lessee to provide, install and hook-up, at no cost to the Lessor, all equipment and casework specifically necessary for the food services areas. Food services exhaust hoods shall be purchased/installed by and at the expense of the Lessee; however, a primary exhaust fan and exhaust duct routed through the FOB mechanical room shall be provided as part of the FOB project, for use by the Lessee. Modifications to the aforementioned provided exhaust fan and duct, if necessary to accommodate the Lessee's fit-up, shall be the sole responsibility of the Lessee. All required testing and approvals of the entire food services exhaust system shall be the Lessee's responsibility and at the Lessee's sole cost.

H. The FOB construction project must be LEED certified. As part of this requirement, all spaces within the LEED project boundary (FOB) must be considered for compliance. The Lessee is responsible for all costs for ensuring that the leased premises must satisfy the requirements of each prerequisite and credit achieved.

For the food services area leased to the Lessee for fit out by the Lessee, the project must provide Lessee design and construction guidelines with language to ensure that future lessees can comply with the requirements of all prerequisites and credits achieved by the LEED project. Lessee's design and construction guidelines must include a description of the sustainable design and construction features incorporated in the project and information that enables the Lessee to coordinate its space design and construction with the rest of the building systems, as well as information regarding how features of the LEED project building can contribute to certification of the tenant space(s) under the LEED CI rating system. See attached full description of these guidelines in SSc9: Tenant Design and Construction Guidelines of the LEED CS V2009 rating system, attached hereto and made a part hereof as Exhibit ____.

I. The Lessee shall not perform any modifications to the leased premises, without the prior written approval of the Lessor. The Lessor shall consider reasonable suggestions from the Lessee for desired modifications, but shall decide upon modifications in the Lessor's sole discretion.

J. The Lessee shall, at its sole expense, be responsible for all costs and expenses associated with the leased premises, effective the date of this Lease Agreement.

K. The Lessee shall submit to DECA for the review and approval of the Lessee's construction documents bearing the seal and signature of a KY licensed design professional, per the laws of KRS 322.360, 323.033, 323.095, and 323.340, prior to beginning any construction on the leased premises, as well as providing 'as built's to DECA, after completion of construction, for submittal to the State plan vault.

L. The Lessor makes no guaranty or warranty, either expressed or implied, with respect to the property upon which the leased premises are situated.

M. As part of this Lease, the Lessee, at its sole expense, shall ascertain food services space must satisfy the requirements of each LEED prerequisite and credit achieved. All spaces within the FOB LEED project boundary must be considered for compliance.

N. A menu board, provided by the Offeror, will be prominently displayed at the entrance of the food services area. Descriptions of daily specials are to be merchandised at the individual service area stations by use of point-of-sale signs, small posters or other attractive signs that are not ostentatious. Any such signs shall be removed at FAC's request.

O. The selected Offeror shall be required to provide all labor and supplies necessary to operate high quality dining services at the FOB.

P. The selected Offeror shall use its best efforts to produce the maximum amount of gross sales possible without limiting the quality of the products sold or the services provided.

Q. The selected Offeror shall not do, or permit to be done, in or about the FOB or in connection with its operation of dining facilities, anything which is illegal or unlawful, or which is of a hazardous or dangerous nature. The selected Offeror shall not use these FOB facilities to cater, or prepare food which will be sold or catered, to any non-state related entity and on any property other than that owned by the FOB, unless specifically approved in writing by the FAC.

R. Services shall be provided to all patrons without discrimination.

S. The Lessor shall have the right to engage other food service providers (such as caterers) for the performance of special functions held within FOB, or on the grounds surrounding the buildings. Any outside provider/caterer or FAC department shall be expected to return the premises to the condition in which

Section 2. Lease Term

This Lease Agreement shall be for an initial period commencing the date this Agreement is executed by the Secretary of the Finance and Administration Cabinet, and ending five (5) years thereafter, with the option for two (2), five-year renewal options upon the written mutual consent of the parties.

Section 3. Lessor Furnishings

- A. The Lessor shall provide the following items for use by the Lessee throughout the Lease term and any renewal thereof:
- Three compartment stainless steel sink in the 153 square feet sundry storage area for shared use by the Offeror
 - A 1,000 gallon grease trap is provided by the Lessor for use by the Lessee.
 - The Lessor shall provide tables and chairs for the interior food services area (café), and tables, chairs, and umbrellas for the outdoor terrace dining area. The Lessee shall work with the FAC space planning personnel to make the selection of the tables, chairs, and umbrellas from the available selections determined by the FAC.
 - A maximum of up to \$150,000 for kitchen equipment for fit up of the leased premises. The Lessee shall be responsible, at its sole expense, for the remainder of the fit-up of the leased space for food service operations, including, but not necessarily limited to any kitchen equipment not covered by the \$150,000 subsidy, floor coverings, walls, serving equipment and furnishings. The Lessor shall provide a subsidy of up to approximately \$150,000 to be utilized *specifically and only* for non-fixtured type kitchen equipment (appliances) for the leased premises. The Lessor shall not provide any fit-up/finishes or furniture or any standard food services operation equipment not covered by the \$150,000 subsidy.
 - The public restrooms (indicated on Exhibit E as "Women RR1.3" and "Men RR1.4" on attached Exhibit ____) are available for use by patrons and employees of the food service

area. No additional restroom facilities must be constructed by the Lessee in the leased premises.

- Five (5) designated parking spaces for the Lessee's employees' vehicles will be provided free of charge in the FOB parking area. A diagram of available reserved spaces will be provided. Employees shall comply with all stated parking policies.
- B. The Lessee shall not remove any Lessor owned equipment from the premises. Each piece of Lessor kitchen equipment will be accompanied by an operations and maintenance manual. The Lessee shall be responsible with complying with the maintenance of the equipment, at its sole expense, according to the preventative maintenance recommendation schedule contained in each manual. The Lessee shall provide the Lessor with semi-annual written reports, verifying Lessee's compliance with each manual's preventative maintenance schedule for each piece of Lessor equipment. After equipment warranty expires, should any Lessor owned equipment require repair or replacement, FAC shall repair/replace equipment, if and only if the Lessee has provided the required compliance verification with operation manuals for the Lessor equipment. Should verification of maintenance not be provided by the Lessee, semi-annually throughout the term of this Lease, or should the equipment suffer abuse or not be maintained properly, then the Lessee shall be responsible for all costs for repair and/or replacement of Lessor kitchen equipment.
- C. The Lessor shall, at its expense, assume the following responsibilities with respect to the leased premises, as follows:
- Provide adequate ingress and egress, including reasonable use of the corridors, passageways, and loading platforms.
 - Maintain and repair the building structures in the area assigned for the Lessee's use, including painting and redecoration; the maintenance of water, steam, sewer and electrical lines, ventilation, and air conditioning lines; electrical lighting fixtures (including relamping); space heating systems; floor coverings; walls and ceilings; and equipment repairs; provided, however, the Lessee shall bear the expense (which shall be non-reimbursable hereunder) of repairs necessary because of its own or its employees', vendors', or agents' acts or omissions or as otherwise provided herein or on any attachments hereto.
 - The Lessor shall provide the connections only for utilities; the Lessee shall provide all else at its sole expense.
 - The Lessor shall provide space for Lessee's General Manager (or "Person in Charge at all times) and for administrative activities such as purchasing, invoice reconciliation, and payroll. All office equipment shall be provided by the Lessee, at its sole expense. The Lessee shall supply calculators and other office items as needed. The Lessee shall provide a written list to the FOB Building Manager annually, of all Lessee-owned and leased furniture, equipment, inventory, etc. brought on site.
 - The Lessor shall provide for periodic major cleaning of dining room carpet, walls, and ceilings.
 - The Lessor shall be responsible to provide recycling containers for aluminum cans and glass bottles in the employee dining facility area, as well as, any area where

these items may be provided. The Lessor shall be responsible for disposing of all these recyclable items.

- The Lessor shall be responsible for disposing of all food service items properly placed in designated waste receptacles by the Lessee.
- Lessor shall maintain an effective program for extermination of pests, rodents and vermin in all areas assigned to the Lessee by the Lessor.
- The Lessor shall not guarantee the uninterrupted provision of the above utilities and service except to ensure that all reasonable and diligent efforts will be pursued in restoring interrupted service. The Lessor shall not be liable for losses in profits which may result from interruptions or failure of services, or any other event beyond the control of the Lessor. The Lessor shall not be liable for food inventory losses caused by interruptions in utilities and services that are beyond the control of the Lessee. The Lessee's insurance coverage shall apply to such losses.

No party shall be liable for any failure to perform its obligations hereunder where such failure results from an act of God or other cause beyond such party's control, provided that if such an event causes Lessee to be unable to perform all of its material obligations hereunder for in excess of five (5) working days, the Lessor may exercise its right to terminate this Lease.

Section 4. Hours of Operation

The Lessee shall keep open FOB dining facilities, at a minimum, Monday – Friday (except for weekends and state holidays below), with the suggested hours of operation as follows:

Employee Dining Services	Customer Access 7:00 a.m – 3:00 p.m. Breakfast: 7:00 a.m. – 9:30 a.m. Lunch: 11:00 a.m. – 3:00 p.m.

*Limited Grill Service

Hot food shall be available, at a minimum, during breakfast hours and during lunch hours.

The Lessee shall close the food services operation pursuant to observance of the following holidays:

- New Years Day – First Day in January +1 Day
- Martin Luther King, Jr.'s Birthday – Third Monday in January
- Good Friday – ½ Day
- Memorial Day – Last Monday in May
- Independence Day – Fourth Day of July
- Labor Day – First Monday in September
- Veterans' Day – Eleventh Day of November
- Thanksgiving Day – Fourth Thursday in November +1 Day
- Christmas Day – Twenty-fifth Day of December +1 Day

The additional day for Thanksgiving and Christmas holidays shall be the holiday dates designated by the Secretary of the Kentucky Personnel Cabinet or notice by the Lessor.

Section 5. Lessee's Employees

The Lessee shall, at its own expense, provide adequate personnel so as to provide quality food services to the patrons at the leased premises without unreasonable delay as determined by the Lessor. Such Lessee personnel shall be trained in food handling, shall be courteous, efficient and sanitary. Persons handling the food and beverage items under this Lease shall at all times be clean, wear disposable plastic gloves, pull back hair, wear hair nets, and be free from any communicable disease.

The FOB shall be a non-smoking facility. There shall be no smoking permitted by the Lessee's employees at any location on Lessor property. See attached Exhibit G for FAC's smoking policy.

The Lessee's employees' personal appearance and courteous service to the patrons of the FOB is deemed to be of the utmost importance to the Lessor. No agent or employee of the Lessee shall be deemed objectionable because of race, color, religion, national origin, sex, disability, or age.

The Lessee shall recruit, hire, train, supervise, direct, discipline and, if necessary, discharge any and all personnel working in leased premises. All employees shall be the sole responsibility of the Lessee and not the Lessor.

The Lessee is an independent contractor and will not, under any circumstances, be considered an employee, servant or agent of the Lessor, nor will the employees, servants or agents of the Lessee be considered employees, servants or agents of the Lessor and neither the Lessee nor its employees, servants or agents shall have any authority to bind the Lessor in any respect whatsoever.

The Lessee shall properly screen all employee applicants prior to employment, including but not limited to a criminal investigation check (Lessee is responsible for all charges associated with the employment screening), finger printing, background check and health screening, to reduce the possibility of the Lessee hiring any person who would pose a security/health risk to Lessor or its employees/guests/facilities. All food service employees will be subject to Lessor pre-employment, random and suspect drug testing. Lessee and Lessee's employees shall follow Lessor work rules and guidelines, including the no smoking policy. The Lessee shall require all its employees to meet the appropriate health standards prescribed by municipal, state, and federal laws and regulations.

The Lessee shall require its employees to comply with all instructions, regulations, and codes of conduct as specified by Lessor related work rules. The Lessor maintains a policy to provide a workplace that is free of substance abuse. The Lessee's employees shall be required to comply

with this policy. Any Lessee employee that is found to be in violation of this policy shall be required by the Lessee to leave the premises permanently. In addition, any illegal substances shall be turned over to a law enforcement agency and may result in criminal prosecution.

The Lessee shall issue name badges to its employees and Lessee's logo may appear on badges (the Lessor shall issue security badges to the Lessee's employees as needed, which shall be worn and displayed by Lessee's employees).

The Lessee agrees to comply with all federal, state, and local laws and regulations, including but not limited to those pertaining to nondiscrimination in hiring and employment practices, and federal immigration laws pertaining to employment. Rules, regulations and laws will be displayed within the food services area in a prominent place where these licenses, permits and/or regulations as required by law are to be so posted.

All employees shall be citizens of the United States or legal immigrants with proper work permit or other appropriate documentation authorizing employment of a non-United States citizen to work in the United States, and shall be able to understand and speak English.

The Lessee shall require all its employees to utilize the designated entrance and exit door, restrict its employees to assigned areas only, and be on the premises only during working hours, unless the Lessor designates otherwise.

The Lessee shall provide at all times adequately trained personnel to maintain the high quality of food service as required by the Lessor. A trained relief staff shall be available to substitute for the Lessee's regular personnel during absences.

The Lessee shall assure that a general manager or qualified replacement ("person in charge at all times"), acceptable to the Lessor, shall be in the employee food services area during all operating hours.

The Lessee shall indemnify and hold the Lessor harmless for any vandalism or loss due to acts (or failure to act) of its employees. The Lessee shall implement and maintain appropriate control measures to guard against pilferage of food, supplies, cash, and equipment. The Lessor requires that the Lessee have all cash handling employees bonded.

The Lessee shall notify the Lessor in writing as soon as it is practical of any anticipated labor, employee, or vendor problems or any other circumstances that could adversely affect the operation of the food service facilities. If applicable, the Lessee shall provide a current Union Labor Contract governing his associates to the Lessor, including date of expiration and anticipated changes.

The Lessee shall continue to provide services under this agreement in the event of strikes and other labor disturbances of its employees.

The Lessee shall maintain all terms and conditions of this agreement and the Lessor operations in the strictest of confidence and shall not in any manner use the leased premises for advertising, publicity, marketing, or public relations purposes without the prior written approval of the Lessor. Furthermore, any visitors to the leased premises (other than vendors or suppliers) must have permission by the Lessor FOB security before access shall be granted to the food services spaces.

Should the Lessor be dissatisfied with services received by Lessee personnel, the Lessor, in addition to the other remedies set forth in the Lease, shall have the right to request replacement personnel, which the Lessee shall provide at no additional cost to the Lessor. The Lessor's request for replacement of the Lessee's personnel must be reasonable and/or supported by a good faith basis for the Lessor making the request. The Lessee agrees to honor all such requests and replace such personnel, at no cost to the Lessor, within ten (10) days. The replacement personnel shall be comparably qualified and acceptable to the Lessor.

Section 6. Title to Improvements

It is understood and agreed by the parties that the Lessee shall have the right, during the term of this Lease Agreement, to erect structures and install Lessee's equipment in or upon the premises, which structures and Lessee's equipment so placed in or upon or attached to said premises shall be and remain the property of the Lessee and may be removed therefrom by the Lessee, at Lessee's sole expense, at any time prior to any termination or expiration of the Agreement, so long as the Lessee has the written approval of the Lessor; provided, however, that no structures may be erected upon the premises until and unless the design and proposed location thereof have been approved by the Lessor; provided, further, the Lessee shall, upon the removal of said structures and Lessee's equipment, or any part thereof, promptly repair any damage to the premises resulting from the installation or removal of said structures and equipment. The Lessee shall not remove the Lessor's kitchen equipment from the premises at any time, unless the Lessee is required by the Lessor to remove said Lessor kitchen equipment for replacement by Lessee, due to Lessee's abuse or not complying with the scheduled maintenance requirements and semi-annual verification reports to the Lessor. Any Lessor kitchen equipment replaced by the Lessee shall remain the property of the Lessee.

All structures/fixture and equipment of the Lessee placed in or upon or attached to the premises shall be at the sole risk of the Lessee. Nothing herein contained, however, shall be construed to confer any right upon the Lessee to construct, operate or maintain any structure/fixture without compliance with requirements of the Commonwealth of Kentucky.

The Lessee's equipment not removed from the premises within sixty (60) days after any termination or expiration of this Lease Agreement shall become the property of the Lessor to dispose of as it determines to be in the interest of the Lessor.

Section 7. Rental Consideration

In consideration of the granting of this Lease Agreement, the Lessee agrees to pay the Lessor _____ percent (___%) of the gross receipts derived from the food services operation at the leased premise. Payments shall be made to the _____ by the

15th day of each month. Any payments made more than thirty (30) days past the due date are subject to a late penalty of 1.5% per month until paid.

Section 8. Utilities and Sewage

The Lessee shall provide, at its own cost and expense, any and all necessary utilities and sewage facilities necessary for the Leased premises, including obtaining all necessary easements and rights-of-way from the various private, local, state, and federal government agencies involved, and including all necessary hook-ups and the transfer of utilities into Lessee's name for Lessee's payment of utilities during the term of this Lease.

Section 9. Alterations/Renovations of the Leased Premises

- A. The parties hereto agree that the premises are to be leased in their "as is" condition.
- B. All construction, alterations, renovations, repairs to the Leased premises shall be made subject to all applicable building codes of the Commonwealth of Kentucky and the Americans with Disabilities Act (ADA). This shall include any and all building inspections, which are required by law to be performed prior to commencement of Lessee's operation of the Leased premises.
- C. Any alteration, renovation, major repair, or other improvements which the Lessee desires to make to the Leased premises shall be made only after receipt of the prior written approval of the Lessor. Upon receiving a written request from the Lessee for permission to make alterations, renovations, major repairs, or other improvements to the Leased premises, the Lessor shall, within a reasonable amount of time, either approve or disapprove said request in writing. Lessee understands that any such request must include copies of any and all construction/renovation plans. Lessor covenants and promises that its approval shall not be unreasonably withheld for any reasonable request from Lessee. This request must include copies of any and all construction/renovation plans.
- D. Lessor shall routinely monitor all construction/renovation work performed by the Lessee or its agents under the terms of this Lease Agreement.
- E. The Lessee shall obtain all occupancy permits required by state law prior to permitting the general public to enter the aerial adventure park attraction.
- F. Lessee shall comply with all standards set by the State Fire Marshal's Office, the Kentucky Occupational Safety and Health Standards Board, and any and all other local or state laws.
- G. The Lessee and Lessor shall co-operate to procure all necessary permits including those which may be required for any renovation, repairs, and/or construction work which is done pursuant to this Agreement, and licenses which are required by state and local laws. Lessee and Lessor agree that plans for electric, fire code, housing, permits must be reviewed by the Department of Housing, Buildings and Construction prior to any construction. The Lessee further agrees that it shall abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments during the term of this Lease Agreement.

Section 10. Protection of Work, Property, Employees, and Public

A. The Lessee shall continuously maintain adequate protection and safety rules and procedures during its occupancy of the aforementioned premises and shall protect the Lessor's property, its employees, and the public from injury or loss arising in connection with this Lease in a prudent manner. The Lessee shall make good any such damage, injury, or loss to the extent that it may legally do so by the appropriate means authorized by the General Assembly.

B. The Lessee shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky Workers Compensation laws and all federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The Lessee shall designate a responsible member of its organization on the work as safety officer, whose duty shall be to enforce safety regulations.

Section 11. Mechanic's and Materialman's Lien

A. Nothing in this Agreement shall in any way be deemed or construed as constituting an order or request by the Lessor, or the Lessee, expressed or implied, to any contractor, sub-contractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the construction of any improvement on, alterations to, or other improvements to the Leased premises, nor as giving Lessee any right, power, or authority to conduct or permit the rendering of any services or furnishing of any materials that would give rise to the filing of any mechanic's liens against the Leased property, or Lessee's Lease-hold interest in said property.

B. The Lessee and/or its contractors shall not suffer or permit any mechanic's or materialman's lien to be filed against the Leased property or the Lessee's Lease-hold interest in the Leased premises at any time. If a mechanic's or materialman's lien shall be filed against the Lessee, then the Lessee and/or its contractors shall cause the same to be discharged within ninety (90) days after the notice of filing thereof by payment, deposit, bond, or Order of Court of competent jurisdiction or otherwise. If the Lessee, in good faith, disputes the validity or correctness of any such lien, then it may refrain from paying or causing the same to be released of record and discharged of record, but it shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien.

C. The Lessee shall not be deemed to be in default under this Agreement while such proceedings or litigation are being conducted in good faith by them. However, if the Lessee fails to cause any such lien to be discharged within the period aforesaid, or fails to contact the same as provided above, the Lessee shall be deemed to be in default of this Agreement, which shall be a basis for termination of this Agreement.

Section 12. Maintenance of the Leased Premises

A. It is agreed that the Lessee, at its sole expense, shall be responsible for making any and all improvements to the Leased premises, and maintaining the same, during the term of this Lease Agreement, including but not limited to those repairs and renovations necessary to make these improvements habitable by the Lessee.

B. The Lessee shall be responsible, at its own expense, for repair and maintenance of all existing facilities (to include utilities, janitorial services, and supplies); painting, and daily cleaning of accommodations and all other structures and grounds, as appropriate, to assure the highest level of cleanliness.

C. The Lessee shall, at its sole expense, be responsible for preventative maintenance of all equipment and buildings in accordance with manufacturer's recommendations; keeping maintenance records on equipment and providing such records to the Lessor, upon request.

D. The Lessee, at its sole expense, shall be responsible for rebuilding, restoration and replacement of property, buildings and equipment damaged by casualty or resulting from the negligence or intentional acts of the Lessee, its agents or employees, or by any act of God. The Lessee shall maintain, make arrangements for, and bear all expense for inclusive insurance necessary to protect the Leased premises.

E. The Lessee, at its sole expense, shall assume responsibility for all existing facilities, including any labor, equipment, and supplies.

F. The Lessee shall keep any and all proposed buildings, structures, and other improvements located on the Leased premises (interior and exterior) and all equipment and personal property within said buildings and structures in good repair, and shall not suffer or permit any waste to be committed or anything to be done on the Leased premises that would constitute a nuisance.

G. The Lessee shall do those acts as necessary to: (1) maintain the property in a reasonably attractive, clean, efficient, and safe condition; (2) prolong the useful life of the property; and (3) cause the property to be in conformity with all federal, state, and local regulatory standards.

Section 13. Insurance:

a. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence for Bodily Injury, Personal Injury and Property Damage, \$2,000,000 aggregate including:

1. Premises – Operations Coverage
2. Products and Completed Operations
3. Contractual Liability
4. Broad Form Property Damage
5. Independent Contractors Protective Liability
6. Personal Injury

The Lessee must furnish a copy of its insurance policies to the Lessor prior to commencement of operations, and on an annual basis thereafter for the full term of the Lease Agreement and any renewals thereof.

After award of the Lease Agreement, the minimum liability amounts of required coverage established under this Section shall be subject to modification by the Commonwealth upon sixty (60) days written notice to the Lessee.

b. Said insurance policies shall name the Lessor as additional insured and shall also provide that said policy shall not be subject to cancellation, termination, or change without at least thirty (30) days prior written notice to the Lessor. Lessee must furnish a copy of its insurance policy to the Lessor prior to commencement of operations, and on an annual basis thereafter for the full term of the Lease and any renewals thereof.

Section 14. Hold Harmless

The Lessee shall indemnify and hold harmless the Lessor from any and all claims, demands, damages, actions, costs, including attorney fees, and charges which the Lessor or Lessee may have to pay by reason of injury to any person or property or loss of life or property resulting from or in any way connected with the character, condition or use of the leased premises or any means of ingress thereto, or egress therefrom, or resulting from the Lessee's operations on the leased premises, unless such injury or loss arises directly from the negligence of the Lessor, any of their departments or agencies, or officers or employees while acting within the scope of their employment.

The Lessee shall, at its own expense, assume defense of such claims and actions for damages arising out of such injuries or losses which may be brought against the Lessor by third persons; and shall pay such judgments that may be rendered in such actions, unless such claims or actions for damages and/or judgments arise directly from the negligence of the Lessor, any of its departments or agencies, or any of its officers, agents or employees while acting within the scope of their employment.

Section 11. Assignment or Lease/Prohibition Against Encumbering Premises

A. The Lessee shall not voluntarily, involuntarily, or by operation of law assign, sublet, or otherwise transfer this Lease Agreement, or any interest created herein, to any other person, association, partnership, corporation, or other entity without first obtaining, in each and every instance, the Lessor's prior written consent. Any attempt to assign, sublet, or otherwise transfer this Lease Agreement, or any interest created herein, without such consent shall be void. If an assignment, sublet, or transfer is made with the consent of the Lessor, then the Lessee shall not be relieved from the performance of all terms, covenants, and conditions of this Lease Agreement. If consent is once given by the Lessor to any such assignment, subletting, or transfer, such consent shall not operate as a waiver of the necessity for obtaining the Lessor's consent to any subsequent assignment, subletting, or transfer. No assignment shall be effective or binding against the Lessor until such time as the assignee executes an amendment pursuant to Section ____, reflecting such assignment.

B. Notwithstanding the foregoing provisions, in no event, shall the Lessee voluntarily or involuntarily mortgage or otherwise encumber the Leased premises. Any attempted voluntary or involuntary mortgage or encumbrance of the Leased premises shall be void and of no effect.

Section 12. Covenant of Quiet Enjoyment

The Lessor agrees and warrants to the Lessee that, subject to the Lessee's compliance with the terms and conditions of this agreement, that the Lessee shall be entitled to hold the premises with right of quiet enjoyment, use and benefit, during the term hereof, and any renewal period.

Section 13. Lessor's Remedies Upon Default

If at any time during the period in which this Lease Agreement is in effect, the Lessee, in the opinion of the Lessee, defaults on any obligation incurred hereunder, and the Lessee fails to cure such default within thirty (30) days of receiving notice thereof, then the Lessor may terminate this Lease Agreement without further obligation to the Lessee.

Section 14. Cancellation /Termination

Either party may cancel this Lease Agreement for administrative convenience upon thirty days written notice to the other party, or may terminate this agreement at any time for cause with thirty days written notice.

Section 15. Inspection of the Premises and Access to Lessor's Property

The Lessor reserves the right to enter and inspect the property during business hours at any and all times, upon reasonable notice to Lessee. Furthermore, the Lessor reserves the right to enter the property for the purpose of ensuring the Lessee is complying with all terms and conditions contained in this Lease Agreement, and for any other business purpose.

Section 16. Right of Entry

The right is hereby reserved to the Lessor, its officers, agents, and employees to enter upon the Leased premises at reasonable times to inspect the premises, operation, and equipment, or for any business purposes in connection with work necessary to the benefit of the Lessee and/or the Lessor.

Section 17. Amendment to Lease Agreement

It is agreed to by the parties to this Lease Agreement that all prior negotiations have been merged into said Agreement, which may not be modified, altered, or amended except by a "Lease Agreement Amendment" signed by all parties to this Agreement.

Section 18. Records and Reports

The Lessee is required to keep business records in the regular course of doing business and accurate financial records of all transactions relating to the Leased premises and to maintain such records in accordance with state records retention and destruction policies and regulations. The business and financial records shall be subject to inspection or audit by designated representatives of the Lessor and Lessee at all times during regular business hours and shall be made available at a convenient location for that purpose.

Section 19. Waiver

The Lessor reserves and shall have the exclusive right to waive, at the sole discretion of the Lessor, and to the extent permitted by law, any condition under this Lease Agreement after consent by Lessee. No act by or on behalf of the Lessor shall be, or deemed to be construed to be, any waiver of any part term or condition unless the same shall be in writing, signed by the Lessor, and expressly stated to constitute such a waiver.

Section 20. Signage

The Lessee, at its sole expense, may install promotional, marketing and advertisements upon signs at appropriate locations on the Leased premises.

Section 21. Severability Clause

If any provision of this Lease Agreement is declared invalid or unenforceable, then the remainder of said Agreement shall continue in full force and effect.

Section 22. Conflict of Law and Choice of Law Provision

It is agreed by the parties hereto that the laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity, interpretation, construction, and performance of this Lease Agreement. Furthermore, the parties hereto further agree that any legal action, which is brought on the basis of, said Agreement shall only be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

Section 23. Successors and Assigns

The covenants, conditions, and agreements made and entered into by the parties hereto are declared and agreed to be binding upon and to inure to the benefit of their respective successors and/or assigns.

Section 24. Prevailing Wages

If applicable, the Lessee is obligated to adhere to the prevailing wages laws (KRS 337.530-337.550) for one hundred percent (100%) of the entire food services project at the leased premises.

Section 25. Performance Bond or Letter of Credit

The Lessee shall procure payment and performance bonds in favor of the Lessor in the amount of one hundred percent (100%) of the designated amount of the Project as security for the faithful performance of the construction required, including liquidated damages that may become due as a result of late completion of the project and the payment of all persons who have and fulfill subcontracts which are directly with the Lessor. Such payment and performance bonds shall be issued by a reputable insurance company, authorized to do business in the Commonwealth. The Lessee shall, before beginning the construction/development of facilities, require of any subcontractor employed by the Lessee to construct said facilities, a surety bond or bonds in form satisfactory to the Commonwealth.

These bonds shall protect the leased premises against the imposition of mechanics and materialsman's liens and guarantee performance of the construction subcontract. All bonds shall be executed by a surety company authorized to do business in the Commonwealth.

Performance and Payment Bonds Requirements:

1. Each bond furnished by the Lessee shall incorporate, by reference, the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event a Change Order(s), executed by the Lessee, adjusts the Contract Sum, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.
2. The Lessee's bond (s) shall include a provision that will guarantee the faithful performance and payment of the prevailing hourly wage as set forth in the schedule incorporated in the Contract.

Section 26. Assignment

The Lessee shall not sublet, assign, transfer or delegate any listed responsibilities or any part hereof, without prior review and written consent of the Lessor. The Lessee shall not hire any subcontractor to perform any of the services contemplated hereunder without the prior written approval of Lessor, which may be withheld in its sole discretion. Any assignment without Lessor's written consent shall be void and cause no binding effect upon the Lessor. In addition, if any portion of the work or services, which have been subcontracted by the Lessee, is not executed in accordance with this Lease Agreement, the subcontractor shall be replaced on request of the Lessor. No subcontract entered into by the Lessee shall relieve the Lessee of any of its liabilities and obligations, including those assigned to any subcontractor. Any such unapproved disposition by the Lessee shall be an act of default, and the Lessor may cancel the Lease Agreement pursuant to Section ____.

Section 27. Employment Practices

1. The Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Lessee shall take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation or disability. Such action shall include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates or pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this clause.
2. The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification.

3. The Lessee shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementation rules and regulations prescribed by the Secretary of labor and with Title 41, Code of Federal Regulations, Chapter 60. The Lessee shall comply with related Commonwealth of Kentucky laws and administrative regulations.
4. The Lessee shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11748 and the federal vocational Rehabilitation Act of 1973, as amended.
5. The Lessee shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the regulations thereunder; Section 504 of Title V of the Vocational Rehabilitation Act of 1973, as amended; the Kentucky Civil Rights Act; and the ADA.

Section 28. Conflicts of Interest

The Lessee shall ensure that it complies with any state or federal law relating to conflicts of interest, including (but not limited to) KRS Chapter 11A and KRS 45A.340.

Section 29. Conformance with State and Federal Law

The Lessee agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. The Lessee accepts full responsibility for payment of all taxes and insurance including workers' compensation insurance premiums, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Lessee in performance of the work authorized by this contract. The Lessor does not agree to pay any taxes.

Section 30. Permits, Licenses, Taxes, and State Registration

1. The Lessor shall procure all necessary permits and licenses, authorizations and certificates and abide by all applicable statutes, regulations, and ordinances of the United States, the Commonwealth of Kentucky, the Finance and Administration Cabinet, and all political subdivisions thereof in which work under this contract is performed. The Lessee shall provide to the Lessor, at the Lessor's request, copies of any such permits, licenses, authorizations and certificates. The Lessee agrees that should its operation be shut down for its willful or negligent failure to comply with the requirements of the Health Department of the Commonwealth of Kentucky, the Lessee shall pay to the Lessor as liquidated damages the sum of one thousand dollars (\$1,000.00) per day for each day during the shutdown period on days the FSOB is open.
2. The Lessee shall furnish certification of authority to conduct business with the Commonwealth of Kentucky as a condition of contract award. Such registration is

obtained from the Kentucky Secretary of State's office, which provides the certification thereof.

3. The Lessee shall pay any sales, use, and personal property taxes arising out of this Lease Agreement and the transactions contemplated thereby. Any other taxes levied upon this contract, the transactions, or the equipment or services delivered pursuant hereto shall be the responsibility of the Lessee.

U. Rights and Remedies

The rights and remedies of the Commonwealth of Kentucky provided in Sections IV. H and IV. Z - AA shall not be exclusive, and are in addition to any other rights and remedies provided by applicable state or federal law or the contract entered into pursuant to its RFP.

V. Waiver

No covenant, condition, duty, obligation, or undertaking contained in, or made a part of, the contract shall be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all undertakings, and other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

Any consent by any party to, or waiver of, a failure of the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent failure.

W. Assurances before Breach

If services or other deliverables due under the contract resulting from this RFP are not to the satisfaction of the FAC, the Offeror is to be prepared to deliver assurances in the form of additional Offeror resources to the project in order to complete the delivery to the satisfaction of the FAC and to demonstrate that other major services shall not be affected. The quantity and quality of such additional resources is at the discretion of the FAC and failure to comply is subject to the provisions of termination as specified in Sections IV. Z, AA-EE and any other pertinent sections within this RFP.

X. Contract Variations

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the FAC and the Offeror shall be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Y. Attorney's Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the Commonwealth of Kentucky prevails, the Offeror agrees to

pay all expenses of such action, including attorney's fees and costs, as set by the court or hearing office.

Z. Termination of Contract

The contract resulting from the RFP shall be subject to the following termination provisions. The contract may be terminated by the FAC:

1. for default;
2. for Offeror bankruptcy;
3. for convenience.

AA. Remedies and Termination for Default

In the event the selected Offeror shall default as defined in this Section, and such default shall continue unremedied for sixty (60) days after written notice thereof is given to the selected Offeror by the FAC, the selected Offeror shall, at the discretion of the purchasing official, be declared in default and such contract may be terminated as a result of such default. If the selected Offeror remedies the default within the sixty (60) day notice period, the FAC shall consent to a continuation of performance, which consent shall not be withheld or delayed unreasonably.

A default in performance by a Offeror for which a contract may be terminated shall include, but shall not necessarily be limited to (a) failure to perform the contract according to its terms, conditions, and specifications; (b) failure to make any payment due hereunder; (c) failure to comply substantially with the terms and conditions concerning the FSOB's standards with respect to quality of food and service and with respect to prices; (d) failure to make delivery with the time specified or according to a delivery schedule fixed by the contract; or (e) if the selected Offeror abandons the FSOB, or (f) letters of indebtedness received from creditors by the purchasing agency; or (g) if the selected Offeror commits any other material breach or fails substantially to perform any other material obligation hereunder.

The Offeror and/or his surety shall be jointly and severally liable to the Commonwealth for all loss, cost, or damage sustained by the Commonwealth as a result of the Offeror's default; provided, however, that a surety liability shall not exceed the final sum specified in the Offeror's bond or letter of credit.

BB. Termination of Offeror for Bankruptcy

In the event of the filing of a petition in bankruptcy by or against the Offeror, the FAC shall have the right to terminate the contract upon the same terms and conditions as a termination for default.

CC. Termination for Convenience

The Commonwealth shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the purchasing official has determined that such termination will be in the Commonwealth's best interests. When it has been determined that a contract should be terminated for the convenience of the Commonwealth, the purchasing

agency shall be authorized to negotiate a settlement with the Offeror according to terms deemed just and equitable by the purchasing agency. Whenever a contract is terminated for the convenience of the Commonwealth, the Offeror shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by submission of complete and accurate cost data employed in submitting his bid proposal for the contract and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination.

DD. Procedure on Termination

Upon delivery by certified mail to the Offeror of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective, the Offeror shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. Assign to the Commonwealth in the manner and to the extent directed by the purchasing official, all of the right, title, and interest of the Offeror under the orders so terminated, in which case the Commonwealth shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval or ratification of the purchasing official, settle all outstanding liabilities and claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the contract;
6. Transfer title to the Commonwealth (to the extent that the title has not already been transferred) and deliver in the matter, at the times, and to the extent directed by the purchasing official, all permanent fixture, permanent equipment, and other permanent items, in any form, that relate to the work terminated by the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
8. Take such action as may be necessary, or as the purchasing official may direct, for the protection and preservation of the property related to the contract which is in the possession of the Offeror and in which the Commonwealth has or may acquire an interest.

The Offeror shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

EE. Termination Claims

After receipt of a Notice of Termination, the Offeror shall submit to the purchasing official any termination claim in the form and with the certification prescribed by the purchasing official.

Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the purchasing official with such six month period or authorized extension thereof. However, if the purchasing official determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six month period or any extension thereof. Upon failure of the Offeror to submit its termination claim within the time allowed, the purchasing official may, subject to any review required by the Commonwealth procedures in effect as of the date of execution of the contract, determine, on the basis of information available to him, the amount (if any) due to the Offeror by reason of the termination and shall thereupon cause to be paid to the Offeror the amount so determined.

Subject to the provisions of the previous paragraph and any review required by the Commonwealth procedures in effect as of the date of execution of the contract, the Offeror and the Commonwealth may agree upon the amounts to be paid to the Offeror by reason of the total or partial termination of work pursuant to this article. The contract shall be amended accordingly.

In the event of the failure of the Offeror and the Commonwealth to agree in whole or in part as to the amounts with respect to cost to be paid to the Offeror in connection with the total or partial termination of work pursuant to this article, the Commonwealth shall determine (on the basis of information available) the amount, if any, due to the Offeror by reason of termination and shall pay to the Offeror the amount so determined.

The Offeror shall have the right of appeal, as stated under Disputes Section IV K from any such determination made by the Commonwealth.

FF. Governing Law, Venue, Severability

The validity, construction and performance of the contract and the legal relations among the parties to the contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The venue for this contract shall be the Franklin County Circuit Court, sitting without jury, Frankfort, Kentucky. If any provision of the contract or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the contract shall remain in full force and effect.

GG. Period of Performance

The FAC anticipates that the contract shall commence upon signature of the Secretary of Finance for purposes of Offeror's assistance with layout of kitchen design, etc. The food services operation facility shall not become operational until notification from the FAC, based on notice that the construction of the FSOB is complete, and terminate five (5) years from the effective date of award. Upon mutual consent of the selected Offeror and the FAC, this agreement may be extended for one (1) five (5) year period, subject to all the terms and provision of this contract. (See Section IV B)

HH. Financial Arrangements

The selected Offeror is expected to be compensated by revenue it produces from its operations at the FSOB. The FSOB shall not provide compensation for services the selected Offeror performs nor provide any funds for capital investments unless specified herein. The FAC does not guarantee the Offeror will derive a profit from operations at the FSOB and does not guarantee the level of income or expenses from operations at the FSOB.

FSOB food service operations will be a contractual arrangement based on a profit or loss contract for the Offeror. This is for all food, beverage, catering operations combined. Offeror shall retain all cash receipts realized from the food service operations and pay all operating expenses.

II. Rights to Perform as to Dining Services

The FSOB shall provide the selected Offeror exclusive operation and management of the dining facilities as described herein.

JJ. Offeror's Right to Subcontract

The selected Offeror shall not subcontract with any other food service provider without the PRIOR express written consent of the FAC and any subOfferor hereof is subject to the same terms and conditions contained herein as the selected Offeror.

KK. Capital Improvements and Equipment

a. Equipment.

The Offeror should understand that the purchase of any equipment deemed necessary to implement the Offeror's proposal, shall be at the Offeror's sole expense, with the exceptions of FAC equipment described within this RFP. Equipment and items furnished by the FAC may be used by the selected Offeror free of any rental charge. Prior to opening of the FSOB, a detailed inventory shall be made of equipment purchased by and being the property of, the FAC. In subsequent years, the selected Offeror shall provide an annual updated inventory report to the FAC no later than June 1. The selected Offeror shall be responsible for the future repair and replacement of equipment and other fixed and portable items in the food service inventory. The selected Offeror shall not remove any of the FSOB's equipment, except by prior written permission of the FAC. The FAC is not responsible for any repair and maintenance of equipment owned by the selected Offeror.

Interior dining tables and chairs shall be selected by Offeror, but must be approved by FAC and the FSOB design team prior to purchase by the Offeror. Selection of the tables and chairs will be made from the Offeror's submitted product data or from other sources if necessary. This data shall include product information, technical specifications, unit prices, photographs and actual samples of each item. Equipment includes any item with a depreciable life of one year or more. Ownership of all equipment provided under this agreement shall be vested in the Offeror. Offeror shall ANNUALLY provide a list of Offeror-owned and leased equipment brought on site to the FSOB Superintendent.

b. Capital Improvements and Alterations

The Offeror understands that the food services area/cafeteria food services areas shall be made available as unfinished shell space only. Basic utilities shall be brought to the shell space as part of the FSOB construction project, but not distributed. All food services fit-up construction shall be at the Offeror's sole expense.

The FAC reserves the right to implement future capital improvements at the expense of the FAC. The selected Offeror shall make no alterations to the facilities or other capital improvements, including interior décor, without first submitting a schematic drawing of its proposed changes and obtaining prior written approval from the Finance and Administration Cabinet's Division of Engineering and Contract Administration.

LL. Maintenance and Repairs

The Offeror shall maintain, at all times, the FSOB food service facility in a clean and sanitary manner in accordance with the highest industry standards and will comply with all federal, state and local laws, codes, and regulations. The Offeror shall train all employees to follow a "clean-as-you-go" policy. The food service facilities are subject to inspection by state or county authorized health department officials, fire department, and other agencies relative to safety requirements. The Offeror shall immediately notify FAC, in writing, of any potential violations. The Offeror shall immediately notify FAC, in writing, of any notices of violations that are received during or in connection with inspections. A copy of ALL inspection reports received by Offeror shall be immediately sent to the FSOB superintendent. The Offeror shall include action plans to correct conditions causing the violation. The Offeror shall immediately notify the FSOB superintendent of all inspection dates and FAC shall have the option to be present at all inspections and shall be given prior notice thereof whenever possible.

In the event Offeror does not take immediate action fully satisfactory to FAC to cure all conditions causing said violations, FAC retains the right (at the non-reimbursable cost and expense of the Offeror, unless such violation resulted from failure of FAC to perform its obligations hereunder) to take all acts and actions that FAC believes to be reasonably necessary to promptly correct all conditions which caused said violations or potential violations. Any fees incurred/action required to satisfy stated or potential violations, shall be the sole responsibility of the Offeror.

The selected Offeror shall be required to repair any damage to any facility at the FSOB, including damage to plumbing and electrical systems, caused by negligence, reckless or willful conduct of the selected Offeror or anyone acting on its behalf, including but not limited to its agents or suppliers.

The selected Offeror, at its sole expense, agrees to repair fully any portion of the facilities damaged or affected by remodeling except in the case of remodeling done at the FAC's request, in which case such repair shall be the responsibility of the FAC.

The selected Offeror shall, at its sole expense, maintain all fixture connections within the facilities and keep all lines between fixtures and basic systems free from obstructions and free from damage resulting from the selected Offeror's operations.

The daily cleaning of floor and wall areas in the kitchen, service area, and all tables and chairs shall be the responsibility of the Offeror. Upon closing each day, the Offeror shall stack the chairs on the dining tables to allow major scrubbing and/or vacuuming of the dining room floors by the evening janitorial crew. The Offeror shall pay the cost of building and equipment maintenance or repairs resulting from the acts or omissions of the Offeror or its employees.

The selected Offeror shall, at its own expense, be responsible for the periodic cleaning of hood ducts, hood and filters, plenums and related vents and fans. All of the aforementioned fixtures shall be cleaned no less frequently than on a monthly basis. The selected Offeror shall be responsible for all required inspections and testing of all air and hood exhaust systems and related maintenance costs. Copies of all inspection reports shall be forwarded by the selected Offeror to the FAC. The FAC shall be responsible for the replacement cost of all air and hood exhaust systems. The FAC shall at its own expense, be responsible for maintaining all other HVAC systems, including associated auxiliary units.

The selected Offeror shall be responsible for general maintenance and repair, including but not limited to minor plumbing and electrical repairs, serving line counter repairs, lubricating equipment, and periodic maintenance checks. The selected Offeror shall be responsible for cleaning the grease traps every six months. The selected Offeror shall be responsible for all required testing, inspection, and maintenance cost associated with the fire prevention system.

The FAC shall be responsible for maintenance and repair of permanent structures including but not limited to walls, floors, doors, ceiling, and roofing repairs, major plumbing and electrical system repairs, bathroom fixtures, sprinkler systems, windows, and permanently affixed table and chair repairs. Purchase and installation of all replacement equipment and/or personal property shall require the approval of the FAC.

MM. Site Maintenance and Cleanliness

The selected Offeror shall, at its sole expense, maintain and keep the interior and the area immediately surrounding the food services operation and outdoor eating area at all times in excellent order and repair and in an exceptionally clean and sanitary condition, in accordance with the highest industry standards pertaining to operations at similar facilities, upon the request of the FAC. Public restrooms are the responsibility of the FAC and are excluded from this provision. All floors shall be policed and mopped, countertops, tables and chairs policed and cleaned, outside dining area cleaned, and trashcans emptied on an as needed basis and/or as determined by the FAC. The FAC has the right to disallow the use of any cleaning products, practices or equipment which, in the opinion of the FAC, may do damage to FSOB property.

The Offeror shall adhere to the following standards in the preparation, production and service area in addition to those set forth herein:

- Clean all kitchen and service area surfaces (walls and floors) and equipment including food preparation equipment on a continual basis and following each meal period.
- Perform regular daily cleaning of all kitchen and service area floors and walls, inside filter line of exhaust hoods, condiment stands, water fountains, doors, posts, pillars and spot cleaning of dining area floors. (FAC will be responsible for the major scrubbing and vacuuming of dining room floors by the evening janitorial crews.)
- Keep public areas free of hazardous conditions.
- Adhere to industry accepted sanitation regulations and Kentucky laws for recommended ware washing temperatures and the use of chemical sanitizers.
- Monitor the dining areas before and during service hours to maintain dining rooms in a clean and orderly fashion. Tables and chairs are to be aligned and clean. Offeror shall continually bus any remaining dishes, trays, and trash during operating hours. All tables shall be cleaned and chair seats brushed off continually and upon the completion of each meal period.
- Store all cleaning supplies in non-food areas. All cleaning chemicals used by Offeror shall have appropriate MSDS information posted in an area common to all its employees and FAC.
- The Offeror is responsible for properly disposing all trash in the receptacles provided. Proper disposal must include a program to recycle all glass and aluminum that meets the FAC current recycling policies.

Furthermore, FAC and the Offeror shall jointly develop evaluation checklist and customer satisfaction surveys to monitor and evaluate mealtime delivery and food quality. The Offeror (at different times) will be responsible to complete three (3) checklists to monitor compliance with the standards set forth in this agreement shall be the responsibility of FAC.

Offeror shall assist in the FAC maintenance program by completing the following at no additional cost to FAC:

- At the request of FAC, the Offeror shall provide manufacturer recommended scheduled maintenance or maintenance agreements for equipment to the FSOB superintendent. The Offeror shall immediately notify FSOB superintendent of any major equipment failure that will adversely affect the food service operations or result in spoilage of food, etc.
- Offeror will repair the item or call the appropriate service agency for equipment repairs as specified in above section. If the Offeror notices any condition which is unsafe, unhealthy, or in any way could cause an accident, the Offeror shall immediately make or cause to be made appropriate repairs to remedy the condition.
- Offeror immediately shall notify FSOB superintendent, in writing, of any accident or safety hazard. Offeror shall also advise FSOB superintendent in writing, of whatever action the Offeror has taken to remedy any safety hazard. The Offeror and its employees shall abide by and practice all Commonwealth of Kentucky and county safety standards and regulations. The Offeror shall take all necessary and proper precautions

to protect the safety of employees and other persons and to protect all property from any damages from whatever cause.

- The Offeror and any subcontractors shall give access to the authorized representatives of the Labor Cabinet for the purpose of inspecting or carrying out any of the Secretary's duties under the Occupational Safety and Health Act of 1980, as amended. The Offeror shall be responsible for any violation of it or any citation issued thereunder and shall immediately remedy any conditions

NN. Utilities

The food service area shall be separately metered from the remainder of the FSOB for domestic water, gas, and electric; and the Offeror shall solely be responsible for placing in its own name all of the utilities connected with the food service area and shall be solely responsible for paying all utilities for the food services operation.

Electric – FRANKFORT PLANT BOARD

Electric service shall be provided through the electrical distribution wires and facilities of the FSOB; food service area separately metered, with Offeror to be solely responsible for utilities for its area.

Telephone

The selected Offeror shall be responsible for obtaining any required direct-line telephone service. Offeror shall pay any/all charges assessed for telephone service.

Waste Water

Waste water sewer for the food services operation, and dining facilities, area shall be through the FSOB sanitary sewer system. The construction of the FSOB includes a 1,000 gallon grease trap located outside the building. Maintenance/service of this grease trap shall be the sole responsibility of the Offeror.

Domestic Water – Frankfort Plant Board

Domestic water service shall be provided through the plumbing distribution system and facilities of the FSOB; food service area separately metered, with Offeror to be solely responsibility for utilities for its area.

Gas – Columbia Gas of Kentucky

Gas service shall be provided through the gas distribution system and facilities of the FSOB; food service area separately metered, with the Offeror to be solely responsible for utilities in this area.

OO. Trash Collection and Trash Removal

Garbage and trash collection for the food service area and the outdoor terrace dining area, and the areas immediately surrounding these facilities shall be the responsibility of, and at the sole

expense of, the selected Offeror. The selected Offeror shall furnish sufficient and suitable containers for the collection of trash and garbage in the food service areas inside and out. The Offeror is responsible for emptying its garbage and trash receptacles into the building's trash/recycling dumpsters located in the loading dock area of the building on a daily basis. The selected Offeror shall be responsible for contracting with a trash removal service for the removal of garbage collected in from the loading dock area. The selected Offeror shall be responsible for maintaining the indoor and outdoor dining areas in a trash/garbage and litter free manner, commensurate with the highest industry standards and as determined by the FAC.

PP. Advertising/Graphics

The Offeror may display its identity (logos and graphics) within the food service facility. Signs and other graphic materials are expected to be conservative and must be approved in advance by FAC.

QQ. Prior Notice of Impending Labor Disputes

Whenever the Offeror has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of work under this agreement, the Offeror shall immediately give written notice thereof to FAC. Neither this notice nor any other labor dispute shall relieve the Offeror from its obligation hereunder.

RR. Liquor Sales

The sale of alcoholic beverages is not permitted.

SS. Insurance Requirements

The Offeror shall procure and maintain during the period of this agreement, the insurance described and in the amounts specified in the following subparagraphs:

a. Commercial General Liability Insurance

Throughout the term of this contract, the selected Offeror shall maintain and pay for insurance which shall insure on a primary basis, the selected Offeror, the FAC and its officers, employees, and agents against all claims for personal injury, bodily injury, death, or property damage, all costs and expenses including attorney fees, caused by reason of the operations conducted by the selected Offeror at the FSOB, or ways adjacent thereto, or elsewhere, including and covering, but not limited to, products liability and any and all claims arising out of the consumption of any food or beverage sold or otherwise provided by the selected Offeror, with limits of \$1,000,000 for each occurrence, \$1,000,000 for personal injury and advertising, with a \$1,000,000 aggregate and a \$1,000,000 products-completed operations aggregate for:

- Premises and operations
- Products and completed operations
- Contractual liability for the liability assumed by the Offeror
- Fire damage

In addition, the Offeror shall provide excess limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.

- b. Throughout the term of this contract, the selected Offeror shall maintain and pay for, in the name of the FAC, insurance covering the food service areas and covering all furnishings and equipment owned by the Offeror against loss or damage, all costs and expenses including attorney's fees. The FAC shall be held harmless in regard to any damages sustained to the selected Offeror's property and its employees' property. The amount of such insurance shall be the replacement value of the food service areas and of furnishings and equipment and such amount shall be determined by the FAC. The FAC shall be named the loss payee on the policy.
- c. Limits of Liability
The limits of liability requirements set forth in this Section IV. SS. can be met by the selected Offeror's use of an Umbrella Liability or Excess Liability policy or policies.
- d. Worker's Compensation Insurance
As required by law, and the Employer's Liability Insurance portion of the Workers Compensation coverage shall have a limit of not less than \$1,000,000 or as required by law, throughout the terms of this contract. The selected Offeror shall maintain and pay for Worker's Compensation on all the selected Offeror's employees.
- e. Comprehensive Automobile Liability Insurance
The Offeror shall be responsible for acquiring and maintaining comprehensive automobile liability insurance with a \$1,000,000 combined single limit bodily injury and property damage for each occurrence for all owned, non-owned, and hired vehicles used by the Offeror while performing operations in connection with this agreement.
- f. Copies of Policies and Certificates to be delivered to the FAC
Certified copies of the above described insurance policies and all certificates and proof of renewals thereof shall be furnished to the FAC effective as of the date of this contract. Certificates of Insurance and renewals thereof shall reflect the terms and conditions stated above and shall be provided to the FAC prior to the selected Offeror occupying the FSOB premises.
- g. Insurance companies.
Insurance shall be with a company or companies licensed to do business in the Commonwealth of Kentucky and acceptable to FAC. The insurance company must have a "Best" rating of at least "A+".

h. Contents of Insurance Policies.

All liability insurance policies shall name FAC as an additional insured and shall include a severability of interest clause with respect to claims, demands, suits, judgments, costs, charges, and expenses arising out of, or in connection with any loss, damage, or injury resulting from the negligence or other fault of the Offeror, Offeror's agents, representatives, and employees. The following provisions shall be included in Offeror's insurance policies:

1. "Notwithstanding any other provision in this policy, the insurance afforded hereunder to the FAC shall be primary as to any other insurance or reinsurance covering the FSOB, and such other insurance or reinsurance shall not be required to contribute to any liability until the appropriate limit of liability afforded hereunder is exhausted."
2. "This policy may not be canceled or materially changed until thirty (30) days after receipt by the FAC of written notice of such cancellation or change in coverage, as evidenced by receipt of a certified letter."

The Offeror agrees that FAC is not responsible or liable for any loss, liability, damage, cost or expense (a "loss") related to any act, failure to act, or omission of Offeror or his/her agents, servants, or assigns; including without limitation any loss which is not covered by Offeror's insurance whether by reason of an exclusion or deductible under the Offeror's policy of insurance, a loss in excess of the policy limits, or otherwise. The Offeror expressly waives any claim against FAC (whether as a reimbursable costs or otherwise) for any loss.

TT. Accounting System and Reports

The Offeror shall use GAAP accounting in all transactions dealing with operation of all areas of the FSOB facility.

On a monthly basis, the Offeror shall submit a written report for the previous month's customer counts for the entire operation.

Offeror shall handle all accounting for catering and any other special events, up to the point of Offeror's invoices issued to FAC that itemize departmental charges for each preceding accounting period.

Offeror shall prepare and present to FAC by June 30th of every year an annual budget for all FSOB operations, including detail for each like item of expense and all appropriate assumptions and justifications.

FAC will handle all interdepartmental transfers. Each month during the term of the contract, the selected Offeror shall submit to the FAC a written Gross Sales Summary Statement on a form approved by the FAC and subscribed to by the selected Offeror's on-site general manager. This Gross Sales Summary Statement shall include a separate itemization of gross sales

generated from the food service operation during the preceding monthly accounting period. The gross sales on this statement will be the basis for the percentage return to the FAC.

The selected Offeror shall maintain an accounting system at the FSOB which shall provide a clear understanding of how gross sales are determined. This accounting system shall provide detailed support for the Gross Sales Summary Statement. This support shall, at a minimum, consist of cash register receipts, and group invoices, and shall be organized to provide easy reconciliation to the Gross Sales Summary Statement. This support shall be submitted monthly to the FAC at the same time as the Gross Sales Summary Statement. The Offeror shall submit a description or an example of the accounting system to be used by the dining services at the FSOB in their proposal submittal. See Section IV TT.

The selected Offeror agrees to permit the FAC and its agents and representatives, at reasonable intervals, at any and all times during the selected Offeror's usual business hours to inspect all books, records and accounts of the selected Offeror showing gross sales from all business conducted under this contract, provided that such inspections do not interfere unduly with the selected Offeror's operations hereunder. Further, the selected Offeror shall, within sixty (60) days after June 30 of each year under contract following the actual opening of the FSOB, supply a statement of gross sales for the previous 12 months certified by its chief financial officer, and certified by an independent Certified Public Accountant.

If any such verification or inspection of the selected Offeror's books or any such annual certified report reveals that the selected Offeror has understated gross sales during any monthly accounting period, then the selected Offeror shall be deemed to be in default of the contract according to Sections Z, AA of this RFP.

UU. Fire and Other Emergencies

The Offeror shall immediately call 911 in the event of fire or other emergency and then notify the FAC FSOB Superintendent of the incident. The Offeror shall train all employees to respond to fire, civil defense, bomb threats, evacuations, and other emergencies based on procedures established by FAC.

VV. Damage to Premises

The Offeror shall give FAC prompt written notice of any fire or damage occurring to the premises and a copy of all notices received by the Offeror of any claim for bodily injury occurring within the building.

WW. Security

The Offeror and all of its employees shall comply with all FAC rules and regulations governing access to and conduct on FAC property. FAC may issue keys or access cards to Offeror's key employees (management, cash handlers, and opening cooks) on an as-needed basis at FAC discretion. Employees will enter the building through a designated entrance. Offeror shall furnish FAC with a list of the names of all its employees and provide additions and deletions to the same immediately upon any change therein.

The Offeror shall be responsible for all keys, access cards, employee identification badges, etc. issued to its staff, and shall recover all such items from employees prior to their leaving. Any lost or non-recovered item will be replaced by FAC at a cost of \$25.00 each to the Offeror.

It shall be the Offeror's responsibility to immediately notify FAC of personnel no longer employed or for employees no longer working on the premises, and return immediately to FAC all access cards and/or keys for these individuals. Offeror shall indemnify and hold FAC harmless against any claims, expenses, and liabilities arising out of or in connection with the failure of Offeror to immediately notify FAC of personnel no longer employed or for employees no longer working on the premises.

The Offeror shall have the responsibility for determining that all appropriate equipment and lights have been turned off, and appropriate doors locked at the close of operation within the kitchen, service areas, and dining rooms.

XX. Records, Books, Audits

The Offeror shall keep accurate and complete written records of all revenues and expenses in connection with the operation of the food facility. The Offeror shall keep records for the current fiscal year and for a minimum of three (3) previous years and such additional time that FAC deems necessary. Offeror shall make these records available for inspection, examination, and audit by FAC and its agents. The cost of such audits shall be borne by FAC. Such records shall be maintained on FSOB premises by the Offeror for the duration of this agreement, and be available for inspection and/or audit by FAC or its agents with at least 24-hours notice.

Appropriate vendor invoices must support all expenditures. The Offeror shall pay, on a timely basis and in accordance with all vendor terms, all proper bills and other expenses (other than those paid for by FAC) incurred in the normal operation of FSOB food service.

The Offeror shall also be subject to periodic, unannounced operating audits of the food service facilities by representatives of FAC. Such audits may include, but not be limited to a comprehensive review of:

1. Service quality, efficiency of service, courteousness, etc.
2. Food quality, presentation, and merchandising
3. Sanitation practices and conditions
4. Personnel appearance
5. Training program techniques, schedules, and records
6. Safety conditions
7. Trends of purchases (from cash register receipts)
8. Operational performance from a financial perspective
9. Other related operational conditions and/or practices
10. Working condition of equipment

The Offeror shall be notified in writing by FAC of conditions needing correction or improvement. The Offeror shall comply with any such notice within a two-day period, from the date of notice.

Restricted, authorized FAC personnel ONLY shall have 24-hour access to all parts of the premises, including the employee dining facility and other areas in which Offeror may be working. FAC shall maintain a complete set of keys to the facility.

YY. Advertising/Graphics

The Offeror may display its identity (logos and graphics) within the food service facility. Signs and other graphic materials are expected to be conservative and must be approved in advance by FAC.

ZZ. Prior Notice of Impending Labor Disputes

Whenever the Offeror has knowledge that any actual or potential labor dispute is delaying or threatens the timely performance of work under this agreement, the Offeror shall immediately give written notice thereof to FAC. Neither this notice nor any other labor dispute shall relieve the Offeror from its obligations hereunder.

AB. Labor Relations

The Offeror shall be responsible for its own labor relations with any trade or union represented among its employees and shall negotiate and be responsible for adjusting all disputes between itself and its employees or any union representing such employees. The Offeror shall indemnify and hold Commonwealth of Kentucky harmless for any damages or losses including attorney's fees resulting therefrom. The Offeror shall extend those provisions to all subcontractors.

IN TESTIMONY WHEREOF, the signatures subscribed below of the parties, acting by and through their duly authorized representatives pursuant to such resolutions and official actions as may be necessary to confer full authority upon those representatives, manifesting their assent to the terms and entry into this Agreement as of the day and dates written below.